

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Refer Reply To:  
CC:TEGE:EOEG:EO1  
PLR-132647-10  
Date:  
December 01, 2010

Entity A:

Entity B:

Entity C:

Plan:

State:

Date 1:

Date 2:

Date 3:

Statute:

Dear ,

This letter responds to a letter from your authorized representative dated July 13, 2010, as well as subsequent correspondence, submitted on behalf of Entity A, requesting a ruling that Entity A's income from certain activities is excludable from gross income under § 115(1) of the Internal Revenue Code.

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## FACTS

Entity A is a State nonprofit corporation formed on Date 1 by, and as one of three successor organizations to, the Plan.

The Plan was an unincorporated association formed on Date 2 pursuant to Statute. It served as a joint self-insurance pool for its political subdivision members. The Service issued a favorable § 115 private letter ruling to the Plan on Date 3.

The Plan subdivided its functions into three parts to avoid cross-liability between its joint self-insurance lines: Entities A, B, and C. Entity A is an umbrella organization that oversees the other two organizations. It has no members. Entity B is a joint property & casualty self-insurance pool, and Entity C is a joint healthcare self-insurance pool. The members of Entities B and C are political subdivisions or entities the income of which is excludable under § 115.

Entity A is governed by a board of trustees, and is subject to regulations and bylaws (governing documents) which may be amended or repealed by a majority vote of the board. Entity A's board of trustees consists of the combined boards of directors of Entities B and C, the members of which are elected representatives or employees of the members of Entity B or Entity C.

Day-to-day management of Entity A is provided by an administrator, who is subject to termination by the board, with or without cause. The board shall approve the appointment of the administrators of Entities B and C.

Upon Entity A's termination, any assets remaining after payment of all liabilities shall be distributed to the members of Entities B and C, as determined by their boards of directors.

## LAW AND ANALYSIS

Section 115(1) provides that gross income does not include income derived from any public utility or the exercise of an essential governmental function and accruing to a state or a political subdivision of a state.

In Rev. Rul. 77-261, 1977-2 C.B. 45, income from an investment fund, established under a written declaration of trust by a state, for the temporary investment of cash balances of the state and its participating political subdivisions, was excludable from gross income for federal income tax purposes under § 115(1). The ruling indicated

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that the statutory exclusion was intended to extend not to the income of a state or municipality resulting from its own participation in activities, but rather to the income of a corporation or other entity engaged in the operation of a public utility or the performance of some governmental function that accrued to either a state or municipality. The ruling stated that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and which are within the ambit of a sovereign properly to conduct.

In Rev. Rul. 90-74, 1990-2 C.B. 34, the income of an organization formed, funded, and operated by political subdivisions to pool various risks arising from their obligations regarding public liability, workers' compensation, or employees' health is excludable from gross income under § 115. In this ruling, private interests did not materially participate in the organization, nor did they benefit more than incidentally from the organization.

Entity A oversees the management of Entities B and C, which operate joint self-insurance programs for their members. These programs allow the members of Entities B and C to pool resources to obtain insurance coverage at a level no single member could afford to provide on its own. Overseeing and managing the provision of pooled insurance services to political subdivisions and § 115 entities constitutes the performance of an essential governmental function within the meaning of § 115(1). See Rev. Rul. 90-74 and Rev. Rul. 77-261.

No private interests materially participate in the operation of, or otherwise benefit more than incidentally from, Entity A. Upon dissolution, Entity A's remaining assets, after satisfaction of all debts, will be distributed to the members of Entities B and C, all of which are political subdivisions or § 115 entities. See Rev. Rul. 90-74.

Based solely on the facts and representations submitted by Entity A, we conclude that the income of Entity A is derived from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof for purposes of § 115(1). Consequently, we hold that Entity A's income is excludable from gross income under § 115(1).

Except for the specific rulings above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

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This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

SYLVIA HUNT  
Assistant Chief  
Exempt Organizations Branch 2  
Office of Division Counsel /  
Associate Chief Counsel  
(Tax Exempt & Government Entities)

enclosure: copy for § 6110 purposes